customers, an incumbent LEC's own affiliates or to neighboring or other incumbent LECs should be provided to new entrants. In this way, the Commission can avoid promulgation of standards that must address each of the details of service provision and maintenance. In order for this approach to work, however, the Commission must require incumbent LECs to disclose, upon request, the contractual and other arrangements with retail and other customers that govern installation, quality of service and repair.[4]

As to items such as earnest fees, NPRM ¶ 62, NEXTLINK again suggests reference to the incumbent's arrangements with its neighbors, retail customers or affiliates. If such fees or other arrangements are routinely applied by the incumbent LEC, it is less likely that they are discriminatory in nature. On the other hand, it is often the case that incumbent LECs will waive such fees or make other accommodations for their preferred customers. Competitive carriers should be entitled to the same treatment under the nondiscrimination standards of the Act.

The Commission's focus on performance standards similarly is important. NPRM ¶ 51. New entrants will have no choice but to use incumbent LEC facilities and, as NEXTLINK has experienced, incumbents will have every incentive to delay or diminish the quality of service provided. NEXTLINK therefore suggests that

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[4] Section 252(a) provides for review and approval of both prior and future interconnection agreements. The Commission should broadly interpret this provision to help effectuate the nondiscrimination provisions of the Act.

the Commission establish service quality standards on installation, downtime and mean time to repair with penalties for their violation.

NEXTLINK also fully supports the Commission's tentative conclusion that it has broad authority to order a range of interconnection options, i.e., meet point, virtual or physical collocation. This is consistent with the Act's separate treatment of interconnection generally in Section 251(c)(2) and physical collocation in Section 251(c)(6). As a practical matter, moreover, different kinds of interconnection may be appropriate given technical and other market conditions. The Commission therefore should mandate a range of options for interconnection and leave to the competitive carrier the choice amongst them.

NEXTLINK's experience with some states, i.e., Washington State, that have not specified standards for collocation also has been unfortunate. If such issues are left entirely to negotiation, the incumbent LEC has too much of an opportunity to delay and burden the new entrant. Thus, specific rules giving options to the competitive carrier, not the mere direction to negotiate, are necessary.

Finally, NEXTLINK supports the Commission's tentative conclusion that physical collocation should not be limited to an incumbent's central or tandem offices. In a number of situations that have already arisen in NEXTLINK's experience, a federal

right to collocate at other locations owned by incumbent LECs would have greatly eased NEXTLINK's entry and construction of its network without harming the incumbent.

5. The Commission Should Establish Rules That Provide Certainty Today but Allow for Evolution of Unbundled Network Elements.

The common thread running through the Commission's specific inquiries with regard to unbundled elements is the manner in which this statutory obligation relates to other statutory sections, i.e., those on resale, and the extent to which the unbundling obligation may be frozen in time based on the selection made by the first carrier to request unbundling. NEXTLINK suggests that the wrong answer to these questions could undercut the entire unbundling requirement and NEXTLINK believes this risk is a grave one because Section 251(c)(3) has great promise not only for immediate competitive entry, but also the future evolution of competition in a "network of networks."

To avoid these risks, the Commission should adopt a three-part approach to unbundling.

> First, the Commission should identify a minimum set of network elements that must be unbundled today based on the Commission's understanding of the existing deployment of technology.
>
> Second, and in conjunction with the nondiscrimination provisions of the Act, the Commission should require incumbent LECs to unbundle all network elements that retail customers, other incumbents or the incumbent's affiliates obtain on a discrete basis.

> Finally, the Commission should establish a procedure by which the definition of unbundling can evolve for the future either through negotiated agreements or a procedure by which new entrants may request unbundling of specific elements subject to state arbitration or Commission enforcement.[5]

In addition, NEXTLINK strongly disagrees with any parties that would suggest that the unbundling duty under Section 251(c)(3) and the duty of resale under 251(c)(4) are either co-extensive or an "either/or" option. Congress clearly contemplated unbundling and resale as separate avenues to the same goal of competition and consumer benefits. As a practical matter, moreover, a competitive carrier such as NEXTLINK may choose to employ resale to reach one set of customers in a particular locality, while reaching a different set of customers in that same locality through acquiring and combining unbundled network elements obtained from the same incumbent that provided the resold service. To limit such choices will only serve to delay competitive entry and may require competitive carriers to make inefficient choices in constructing their networks.

The statutory mandate of different pricing standards in Section 251(d) for unbundling and resale only reinforces the conclusion that these two options can be exercised concurrently by the same competitive carrier in the same locale. If these

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[5] Section 252(e)(3) preserves ongoing state authority to arbitrate unbundling disputes. Furthermore, the Commission could address any refusals to unbundle pursuant to the Commission's rules under its complaint authority in Section 208.

were not two distinct alternatives available to competitive carriers, there would have been no need for Congress to enunciate two separate pricing standards.

6. The Commission Should Provide Efficient Access to Network Elements.

With regard to today's environment, it is most important for this Commission to provide certainty and immediate specificity to minimize risk and delay for private investment. NEXTLINK therefore urges the Commission to adopt at a minimum the unbundled elements identified by MCI and AT&T, see NPRM ¶ 92, as well as the specific unbundled elements identified by the Commission thereafter. Indeed, there is a remarkable degree of consensus as to many of the unbundled elements that feasibly can be provided today; the Commission quickly should adopt those elements on which there is consensus. Later, the Commission can consider other elements where there is disagreement or as to which there is insufficient knowledge.

Subject to this overview, NEXTLINK has two specific concerns with the specifics of unbundling as raised by the NPRM. First, NEXTLINK urges the Commission expressly to order unbundling of all kinds of local loops, i.e., two-wire versus four-wire, analog versus digital, and ISDN loops. NEXTLINK already has experience with one incumbent LEC that has sought to limit unbundling of loops to "plain vanilla" two-wire, analog facilities; this is highly discriminatory and only can have the purpose of

disadvantaging competitors that wish to offer more advanced services.

Second, NEXTLINK shares the Commission's expressed concern regarding access to the CPNI of competitors via signaling and database networks because of the competitive sensitivity of such information. It is vital that the Commission establish rules against using CPNI obtained from signaling and database networks for any purpose other than delivery of calls.

E. Pricing Issues Under Section 251.

1. The Commission Should Establish Pricing Principles Elaborating Upon the Act to Facilitate State Arbitration and Other Decisionmaking.

The preliminary inquiry raised by the Commission is its role in setting more detailed pricing requirements under the Act. Consistent with its earlier positions, NEXTLINK urges the Commission to promulgate the most detailed pricing principles that can be developed for nationwide application. This will greatly ease state administrative burdens, maximize the opportunities for consistent rates and rate structures that can be applied by multistate carriers, and greatly enhance the ability of this Commission and federal courts to interpret the Act.

For example, different states naturally will be arbitrating issues at different times or possibly through cooperative state efforts. Standardized national pricing principles will allow state commissions acting together or in later proceedings to

apply the decisions of other states as well as the rules and decisions of this Commission. In the same vein, standardized national pricing principles should facilitate uniform rate structures and rates across jurisdictions. The benefits in terms of simplicity for billing systems of carriers and ease of negotiation and administration are manifest.

Nor should this Commission disregard the value for itself or federal courts that will flow from more detailed national pricing standards. Such standards, for instance, could ease the development of nationwide proxy costs that could be applied in a variety of circumstances. And the benefits for federal district courts interpreting or applying the Act under Section 252(e) or otherwise will be great -- those courts often will have little experience in arcane subjects such as telecommunications cost methodologies and should be able to rely upon the expertise of this Commission.

The benefits for negotiation and mediation that would flow from explicit standards are undoubtedly the greatest. The financial issues of interconnection are often the most hotly contested and direction from this Commission will facilitate agreement as well as equalize bargaining power among incumbent and competitive carriers.

2. The Same Pricing Principles Should Apply to Interconnection, Unbundled Network Elements and Collocation.

NEXTLINK strongly urges the Commission to adopt a single set of pricing principles for the interconnection elements other than resale that are recognized in Section 252(c). First and most obviously, Congress has used the same standard with reference to both interconnection and unbundling; collocation unquestionably is "a subset of interconnection services" both as a statutory matter and a practical one. NPRM ¶ 122. Second, Congress has made clear that it can, if it wishes, establish a separate pricing standard by doing so with regard only to wholesale services for resale under Section 251(d)(3).

Further, there are enormous practical advantages in applying the same pricing principles to the greatest possible range of issues. As the NPRM itself recognizes, there are a multitude of costing and pricing principles that could be argued by their proponents. Adoption by this Commission of a single set of principles will serve the entire industry as well as regulators and courts through greater consistency, focus, and the opportunity to build upon the precedent of prior negotiations and decisions.

3. The Commission Should Reject Traditional Ratemaking Methodologies and Expressly Adopt a Long-Run Incremental Cost Methodology.

The Commission's inquiry into cost and methodologies and rate setting principles begins naturally with the words of the

statute. There, Congress makes clear that traditional concepts of regulatory ratemaking are not to apply and, instead, that a just and reasonable interconnection rate must be based on cost. Given Congress' express rejection of traditional and historical ratemaking and its focus on embedded costs and rate base, the only reasonable choice is to adopt a forward-looking methodology. This methodology requires analysis of the cost of providing an individual element or form of interconnection going forward, rather than the past practices of an incumbent LEC. The conclusion based upon statutory language is reinforced by the clear consensus among parties and economists that a forward-looking, incremental type of cost methodology should be used. NPRM ¶ 124.

As the Commission recognizes, however, adopting a LRIC approach to cost and rate methodology is only the beginning of the inquiry. Thereafter, there remain substantial disputes concerning issues as varied as whether an interconnection element causes a particular cost, the shared nature of certain costs and the forward-looking technology to be employed. Although the incumbent LECs may have the resources to address these questions on a multistate basis, neither NEXTLINK nor many other competitive carriers have the resources to analyze, negotiate and arbitrate a multitude of cost studies. NEXTLINK, therefore, strongly supports the option of using national proxies for cost-

based rates that would work as outer boundaries for negotiations or state arbitrations. NPRM ¶ 125.

As the Commission suggests, moreover, it is vital that any proxy rates be set subject to the recognition that incumbent LECs will have both the incentive and ability to manipulate cost studies or allocation of costs to increase their competitor's expenses. Thus, the Commission's establishment of proxy costs and rates should draw from external sources outside the control of the incumbent LECs and which are subject to check by both the Commission and competitors.[6]

Finally, NEXTLINK submits that the allowance in 251(d)(1)(B) of "a reasonable profit" is in no way inconsistent with or a departure from a LRIC-based methodology. It is generally recognized that a TSLRIC cost study should include a return and it would be "double counting" to allow an additional return on top of the TSLRIC. See Washington Rate Decision at 88. In the same regard, there is no basis to include rate elements such as the TIC or CCLC (or their intrastate equivalents) and the Commission should expressly reject use of such rate elements as

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[6] The Washington Commission recently addressed exactly this problem and adopted the Hatfield Model for cost studies because it relied on data that was obtained from generally available industry sources and that could be verified by third parties. COMMISSION DECISION AND ORDER REJECTING TARIFF REVISIONS, Fifteenth Supplemental Order, UT-950200 (Wash. Util. and Trans. Comm'n., Apr. 11, 1996) ("Washington Rate Decision").

part of Section 251(c) pricing.[7] Nor should any universal service subsidy elements be included; these should be recovered separately and on a competitively neutral manner, subject to the standards of Section 254. Indeed, the Commission will avoid tremendous delay, disputes and burdens on competitive entry if it expressly finds that such rate elements are not to be included in any way under Section 251(d).

4. Rate Structures Should Reflect the Underlying Nature of Costs and Not Provide Opportunities for Excessive Rates.

As well as exploring the level of costs, this Commission should focus on the manner in which costs are incurred. For instance, if a cost is caused by the addition of a facility, the cost should not be recovered through a charge that is sensitive to minutes of use. Thus, this Commission is not compelled to follow historical models that rely on usage-sensitive charges if the costs do not vary by a particular kind of usage.

An additional benefit of avoiding pricing mechanisms based upon minutes of use is ensuring predictability and avoiding the risk of excessive returns by incumbent LECs. For example, a usage-sensitive rate that is based upon a forecast of demand today can become outmoded as usage grows and competitors expand

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[7] It is noteworthy that the Act itself only contemplates two bases for establishing rates--"cost" in 252(d)(1)(A)(i) and "reasonable profit" in 252(d)(1)(A)(ii). Neither concept includes room for rate elements such as subsidies or "markers" like the TIC that are designed only to recover a historical revenue requirement.

their networks. And the incumbent LEC has no incentive to develop new rates because increased volumes simply increase the incumbent's return with no correlative increase in costs.

NEXTLINK supports explanation of rate structures such as those reflecting off-peak costs. However, the advantages of innovative rate structures must be balanced against the disadvantages of complexity and possible disputes that could arise with regard to more complex billing systems. In sum, NEXTLINK believes that the short-term demands for entry will be best satisfied by cost and price methodologies which are consistent, simple and can be implemented quickly.

F. Resale Obligations and Wholesale Rates.

1. The Commission Should Expressly Prohibit Resale Restrictions Absent a Showing That They Are Not Anticompetitive or Necessary to Prevent Transfer of Subsidies in an Unintended Manner.

This Commission has a long history of prohibiting resale restrictions in order to facilitate competitive entry, avoid rate discrimination and maximize benefits to consumers. Indeed, Congress is presumed to have been aware of that history of Commission action when it imposed resale obligations on local carriers. This Commission has found previously that it should establish broad mandates with a heavy burden to prove any resale restrictions are not discriminatory, See, e.g., Regulatory Policies Concerning Resale and Shared Use of Common Carrier Services and Facilities, 60 FCC 2d 261, 321 (1976), amended on

recon., 62 FCC 2d 588 (1977), aff'd sub nom., AT&T v. FCC, 572 F.2d 17 (2d Cir.), cert. denied, 99 S. Ct. 213 (1978). It should follow the same approach as to resale of incumbent LEC services only.

NEXTLINK's experiences in the market demonstrate the need for clear Commission action in this regard. For instance, one of NEXTLINK's operations initially grew through resale of an incumbent LEC service to a point where it could begin to develop facilities of its own. Immediately before signing of the Act, however, the incumbent LEC sought to withdraw the resold service offering, thus seeking to avoid its obligation to allow resale at a wholesale rate. Based on this experience alone, NEXTLINK strongly supports the Commission's tentative conclusion that the range of permissible restrictions on resale should be narrow and that any incumbent LEC proposing limitations must overcome a high burden of proof.

To the same end, promotional and discounted offerings should be available for resale. In NEXTLINK's experience, these offerings often appear as if by magic before a new entrant begins to offer competitive services. And these offerings also regularly include contractual commitments for terms or volumes by which the incumbent LEC locks up customers before they have real choice. Allowing resale of discounted or promotional offerings can help avoid their anticompetitive impact; further, this Commission should ensure that resellers are not required to

accept anticompetitive restrictions such as long-term contracts in order to resell incumbent services.

The Commission also should narrowly interpret the exception that allows limits or resale of a service to one category of subscribers. Section 251(c)(4)(B). Given the overriding Congressional purpose to maximize competitive entry, this provision should be applied only where it is necessary to prevent resale of a subsidized service to another class of customers that were not intended to benefit from a clearly defined subsidy. Furthermore, the Commission should make clear that this provision in no way allows a total ban on resale of, i.e., flat-rated or residential service Instead, the statutory language requires that resale be allowed, but that the reseller may resell only to a subsidized category of customers.

Finally, NEXTLINK wishes to emphasize that resale, although it is an important step on the road to competition, does not satisfy the tests for facilities-based competition under Section 271.

2. The Commission Should Establish Presumptive Wholesale Discounts to Reflect Avoidable Costs.

NEXTLINK urges the Commission to approach the issue of pricing wholesale services having in mind the overall purposes of Sections 251(c)(4) and 252(d)(3). These sections were enacted to encourage the rapid introduction of competition through resale,

and the Commission should ensure that wholesale rates are set in a manner that will facilitate such competition.

As this Commission recognizes, NPRM ¶ 181, simplicity and certainty are critical if resale is to accomplish its intended purpose. Thus, NEXTLINK suggests that the Commission establish a uniform set of presumptions as to avoidable costs based on a publicly available comparable source. This will allow rapid identification of avoided costs and should lead to development of presumed percentage discounts off retail rates. For simplicity reasons, as well, the Commission could apply the same percentage wholesale discounts across different services subject to an incumbent LEC demonstrating that the presumed discount is unreasonable. This would ensure rapid and certain development of wholesale rates and encourage resale as an easy and quick form of entry.

Finally, the Commission should adopt an "imputation rule," as described in the NPRM, ¶¶ 184-88. Such a rule will help guard against anticompetitive price squeezes and also will serve as a check on both the costs used in developing the wholesale rate and the costs used in establishing rates for unbundled elements. Simply put, one methodology that builds from the "bottom up" should produce a result similar to one that is "from the top down."

G. The Commission Should Address Reciprocal Compensation by Establishing an Interim Bill and Keep Mechanism.

NEXTLINK's experience is that a just, reasonable and administratively simple arrangement for reciprocal traffic exchange is the essential first condition for competition. Without the ability to exchange traffic with the incumbent's customers, consumers naturally will refuse to sign up with competitive carriers.

It is also clear, however, that it will take some time before competitive carriers achieve a sufficient volume of traffic from a broad cross-section of customers so that there can be a realistic appraisal of the benefits and costs of traffic exchange that will be experienced in the long run. And these traffic patterns, of course, will be subject to significant variations not based on free consumer choice until number portability is implemented.

NEXTLINK, therefore, recommends that this Commission follow the approach adopted by those state commissions that have adopted "bill and keep" on an interim basis. See, e.g., Cal. Bill and Keep Order, Washington Order, Oregon Order. This arrangement allows the marketplace to develop and data to be gathered on costs and traffic flows while competition develops.

Once sufficient market information is available, NEXTLINK suggests that the Commission explore flat-rated charging mechanisms if "bill and keep" is not an appropriate long-term

solution. Flat-rated pricing mechanisms have tremendous advantages in simplicity and predictability and, in NEXTLINK's experience, the costs of transport and termination do not vary primarily based upon changes in volumes of minutes exchanged.

For the immediate future, nonetheless, the Commission should let markets evolve before it imposes any charging mechanisms for reciprocal compensation. Otherwise, the Commission may burden competitive entry without having available a full picture of the potential for competition in the local market.

H. Arbitration Process.

1. Section 252(e)(5) Provides the Commission With Plenary Authority to Act Expeditiously.

Section 252(e)(5) provides a broad direction for the Commission to step in where a state commission, by not acting, is delaying the process of competitive entry. Thus, the Commission should focus not on state law issues, but on the manner in which the exercise of its Section 252(e)(5) jurisdiction would best effectuate the purposes of the Act by expediting competitive entry.

The Commission, therefore, should establish rules that provide for interested parties to notify the FCC through a simple letter attaching state pleadings or documents that show a state commission has failed to act. Thereafter, the rule should provide for prompt action by the FCC in such circumstances. Furthermore, the Commission should have no need to "remand" an arbitration to a state commission that has failed previously to

act. Not surprisingly, the Act does not provide for such a remand or referral. If a state commission has delayed long enough for Section 252(e)(5) to come into effect, the competitive process already has suffered too much to allow for further delay.

Finally, the Commission should adopt the "final offer" method of arbitration as outlined in Paragraph 268 for arbitrations under Section 252(e)(5). If an arbitration has reached the point in time where Section 252(e)(5) applied, the overriding goal for this Commission should be prompt and efficient action. While an open-ended arbitration method may be appropriate for state arbitrations, this Commission should adopt the final offer methodology to expedite its decision and encourage the parties to present more reasonable terms and conditions than they may have previously offered.

2. Section 252(i) Is an Essential Provision That Allows Carriers to Choose the Best Elements of Other Carriers' Agreements.

As this Commission notes, Section 252(i) is one of the main vehicles of the Act for preventing discrimination. Indeed, Congress itself recognized the importance of 252(i) in this regard and noted that an earlier version of 252(i) applies to "the individual elements of agreements that have been previously negotiated." S. Rep. No. 104-23, 104th Cong. 1st Sess. 21-22 (1995).

If Section 252 i) is to fulfill its promise on a practical level, moreover, it should be interpreted to allow carriers to

choose amongst the primary elements of any agreement.[8] Take, for instance, a situation in which an incumbent has been willing to provide a favorable interconnection rate in exchange for a competitive carrier's willingness to absorb an excessive rate for unbundled loops. The first competitive carrier may have been willing to accept this agreement because it has no intention of acquiring unbundled loops. But another carrier that wishes to choose the favorable interconnection rate should not be forced to accept the excessive unbundled loop rate in circumstances where it may need to use such facilities to reach its customers.

As a matter of administrative and negotiating efficiency furthermore, this interpretation makes sense. Once the main elements of agreements are negotiated, new carriers should be able to pick the features they prefer under Section 252(i) and negotiate additional arrangements to address other subjects.

CONCLUSION

NEXTLINK believes that the Commission has a rare opportunity to implement what Congress termed "a new model for interconnection." Joint Explanatory Statement, p. 8. By doing so in a detailed and explicit manner, and broadly applying its rules throughout the nation, the Commission can help fulfill the

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[8] The Commission can look to the structure of the Act to determine which are the primary elements amongst which another carrier should be allowed to choose. At a minimum, each of the defined interconnection elements in Section 251 should be treated as a separable element as to which a separate agreement is reached.

promise of a nationwide policy for telecommunications for the Twenty-First Century.

The Commission should resist the cries of those who wish to go slow or leave development of policy to multiple arbitrations. Without this Commission's clear statement of the rules, states, private investors and the existing industry will not be able to move forward to accomplish Congress' goals.

Respectfully submitted,

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